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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,663	07/28/2003	Michael Dennis Erinakes	USUN.00001	6452
40006	7590	12/19/2007		
LAW OFFICE OF STEVEN B. LEAVITT, L.L.P. 130 Meadowcreek Rockwall, TX 75032			EXAMINER RIVELL, JOHN A	
			ART UNIT 3753	PAPER NUMBER
			MAIL DATE 12/19/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/629,663

**Applicant(s)**

ERINAKES, MICHAEL DENNIS

**Examiner**

John Rivell

**Art Unit**

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 5/21/07 (amendment).
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 14-17 and 20 is/are rejected.
- 7) ☒ Claim(s) 9-13, 18 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Claims 1-20 remain pending.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 6, 8, 14 and 15 are rejected under 35 U.S.C. §102 (b) as being anticipated by Miller (U. S. Pat. No. 1,367,164).

The patent to Miller discloses, in figure 1 for example, a "vent structure (generally at E) for deterring intruder access to a storage tank (oil sump crank case A), comprising: a bottom plate (including plural openings K)12) for connection to the storage tank (A) wherein the bottom plate has a tank opening (at the connection to pipe C, generally at F) to allow gaseous flow between an atmosphere (at D) in the storage tank (A) and an atmosphere within the vent structure; a cover (H) affixed above and to the bottom plate thereby forming the vent structure housing; a vent opening (at annular port K) formed through the bottom plate to allow gaseous flow between the vent structure's atmosphere (within cover H) and an ambient atmosphere surrounding the storage tank (A); and a tortuous pathway (through the plural baffles at walls G, J and L) disposed between the vent opening and the tank opening within the vent structure thereby allowing gaseous communication between the storage tank atmosphere and the ambient atmosphere

surrounding the storage tank (A) wherein the tortuous pathway further comprises a plurality of baffles (at walls G, J, and L)" as recited in claim 1.

Regarding claim 2, in Miller, ""the plurality of baffles (have) at least one baffle (J) extend(ing) upward from the bottom plate toward the cover and at least one baffle (L) depend(ing) downward from the cover toward the bottom plate" as recited.

Regarding claim 3, in Miller note "first baffle" J, "second baffle" L and "third baffle" at the external periphery of pipe G.

Regarding claim 5, in Miller note "plural openings" at K.

Regarding claim 6, in Miller note "flange" I connecting the plate at the bottom of E to the vented space via pipe C.

Regarding claim 8, in both Bingay and Miller the "tank opening" is "central" and in Miller, it is "encompassed by the third baffle".

Regarding claim 14, in Miller the "vent structure is cylindrical such that the baffles form concentric rings about the tank opening".

Regarding claim 15, in Miller note "flange" I.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (U. S. Pat. No. 1,367,164) in view of Gill (U. S. Pat. No. 1,320,543).

The patent to Miller discloses all the claimed features with the exception of having a "screen" located at the opening(s) at K.

The patent to Gill discloses that it is known in the art to employ a screen at 10 at the openings leading to atmosphere from a tank vent structure for the purpose of preventing particulate mater from entering or leaving the internal vent structure atmosphere.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Miller a screen at opening(s) K for the purpose of preventing particulate mater from entering or leaving the internal vent structure atmosphere as recognized by Gill.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (U. S. Pat. No. 1,367,164) in view of Bingay (U. S. Pat. No. 1,498,537).

The patent to miller discloses all the claimed features with the exception of having "the tank opening (generally at F) covered with a fine mesh screen".

The patent to Bingay discloses that it is known in the art to employ a "fine mesh screen" at 15 between the tank opening and the vent structure internal atmosphere for the purpose of preventing contaminants from passing from the tank interior to the vent structure interior.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Miller a screen at the opening generally at F for the purpose of preventing contaminants from passing from the tank (A) interior to the vent structure interior as recognized by Bingay.

Claims 16, 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (U. S. Pat. No. 1,367,164) in view of Zelch (U. S. Pat. No. 5,816,288).

The patent to Miller discloses all the claimed features as noted above with the exception of having utility as a water storage tank.

The patent to Zelch discloses that it is known in the art to employ a water storage tank including a vent structure fluidly connected to the top of the tank for the purpose of permitting air circulation and preventing intruder access to the water in the tank.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ the device of Miller as an air vent structure connected to a water storage tank for the purpose of permitting air circulation and preventing intruder access to the water in the tank as recognized by Zelch.

Claims 9-13, 18 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Regarding applicants remarks as they may concern the above, the argument that the rejection(s) under 35 USC 103(a) as being obvious over the references as applied above are improper for failure of the respective references to be used for venting the same type of container is unpersuasive. The argument presupposes that novelty is warranted based on the use of the container. As recited in claims 1-15 for example, no specific use is recited in the claims other than the purpose of venting the container to atmosphere, which all references do. Each of the references applied above in a rejection under obviousness employ a vent structure to vent the contents of a certain "tank" to atmosphere. The rejections merely purport to combine features of the vent structure contained in each secondary reference to enhance the features of the primary

reference vent structure. As for specific use, claim 16 merely recites a use. The patent to Zelch clearly discloses it is known in the art to employ an atmospheric vent structure to vent the contents of a water storage tank to atmosphere. Moreover, to be analogous art it has been held that a prior art reference must either be in the field of applicant's endeavor, here a water tank vent which Zelch discloses or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, such as a vent structure per se venting tank contents to atmosphere as in the majority of references cited, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Rivell whose telephone number is (571) 272-4918. The examiner can normally be reached on Mon.-Fri. from 6:30am-3:00pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**John Rivell**  
**Primary Examiner**  
**Art Unit 3753**

j.r.